

These are the tentative rulings for civil law and motion matters set for Tuesday, July 7, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 6, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0046744 Dixie Home Group vs. Abba, Mo, et al**

Appearance required on July 7, 2015, at 8:30 a.m. in Department 40. No motion was filed to set aside the judgment. The debtor's examination will proceed.

**2. M-CV-0059951 Buisson, Linda Jean Styve vs. Deloach, Nancy Ann, et al**

Appearance required on July 7, 2015, at 8:30 a.m. in Department 40.

**3. M-CV-0062345 Alba, Sandra vs. Polanco-Ramos, Reyes**

Defendant's Motion to Compel Responses to Requests for Production of Documents, Set One, Motion to Compel Responses to Form Interrogatories, Set One, Motion to Compel Responses to Special Interrogatories, Set One, and Motion to Have Requests for Admissions, Set One, Deemed Admitted, are continued to July 28, 2015.

Upon review of the motions, the court has questions regarding whether the subject discovery and motions were properly served. There is some indication that plaintiff's counsel has moved, and that defense counsel has been provided notice of a change of address. The court notes that a meet and confer letter sent to plaintiff's counsel was addressed to a location in Elk Grove, which appears to be the new address for plaintiff's counsel. The most recent filing by plaintiff also states an Elk Grove address. Defendant is instructed to serve notice of the continued hearing date to plaintiff at the Elk Grove address. Defendant may also file a supplemental declaration addressing the court's concerns no later than five court days prior to the continued hearing date.

**4. M-CV-0063565 CBM Group, Inc. vs. Ingle, Natalie**

Appearance required on July 7, 2015, at 8:30 a.m. in Department 40.

**5. S-CV-0029141 Cooley, David, et al vs. Centex Homes**

Travelers' Motion Objecting to Recommendation re: Production of Named Insured Claim Files is continued, on the court's own motion, to July 14, 2015, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob. The court apologizes for any inconvenience to the parties.

**6. S-CV-0030645 Graves, Gene, et al vs. Bank of America, N.A., et al**

Defendant's Motion for Summary Judgment is dropped in light of the Notice of Settlement of Entire Case filed by plaintiffs on June 22, 2015.

**7. S-CV-0030873 Goggia, Lara vs. Mortgageit, Corp, et al**

The Motion to Enforce Settlement Agreement is dropped. No moving papers were filed with the court.

**8. S-CV-0033613 Adams, Garnet, et al vs. Del Webb California Corporation**

Peerless Insurance Company's Motion for Leave to Intervene on behalf of cross-defendant Image Landscape, Inc., a suspended California corporation, is granted. The complaint-in-intervention shall be filed and served on or before July 24, 2015.

**9. S-CV-0034010 Beadle, Marva vs. Allied Trustee Services, et al**

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on July 7, 2015, at 8:30 a.m. in Department 44.

Defendant Sutter Capital Group, LP's ("Sutter's") request for judicial notice is granted.

Sutter's unopposed Motion for Judgment on the Pleadings is granted without leave to amend.

Sutter moves for judgment on the pleadings with respect to the fourth and fifth causes of action stated in plaintiff's second amended complaint. Plaintiff's fourth cause of action requests an accounting as to "[t]he actual amount of money owed to defendants and Auburn Woods I HOA". (SAC, ¶ 21.) "A cause of action for accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting." *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179. Plaintiff does not allege a relationship with defendant Sutter requiring an accounting, or that any balance is due to her that can only be ascertained by an accounting. Further, the prayer of the second amended complaint makes clear that an accounting

is only requested as to defendants Allied Trustee Services and Frei Real Estate Services. (SAC, Prayer, ¶ 4.) Accordingly, the fourth cause of action does not state a valid claim against Sutter.

Plaintiff's fifth cause of action seeks an injunction preventing Sutter from prosecuting its separate unlawful detainer action, *Sutter Capital Group, LP v. Marva Beadle*, Placer County Superior Court Case No. MCV-59768, pending resolution of the instant litigation. However, as Case No. MCV-59768 has already proceeded to trial, with a judgment following jury trial being rendered against Ms. Beadle, this cause of action has been rendered moot. Accordingly, the fifth cause of action does not state a valid claim against Sutter.

**The case management conference set July 14, 2015, is dropped. An OSC re: Dismissal is set for September 15, 2015, at 8:30 a.m. in Department 3.**

**10. S-CV-0034248 Jester, Linda, et al vs. Smile Quest Dental, et al**

The Motion to be Relieved as Counsel by Richard E. Lehrfeld is denied without prejudice. The motion is not accompanied by a declaration on the mandatory Judicial Council form required by California Rules of Court, rule 3.1362(c) (form MC-052). Proper service is not established pursuant to California Rules of Court, rule 3.1362(d), (section 3 on Form MC-052). Further, a proposed order has not been lodged with the court as required by California Rules of Court, rule 3.1362(e).

**11. S-CV-0034379 Kuan, Rong, et al vs. Querimit Fastidio, Dennis Rhyan, et al**

The Petition to Compromise Minor's Claim re: Kayden Kuan is granted. If oral argument is requested, appearance of the minor is excused.

**12. S-CV-0035443 Deck, Vernon Ray vs. Ocwen Loan Servicing, LLC, et al**

The Motion to be Relieved as Counsel by GianDominic Vitiello and Kathcko, Vitiello & Karikomi, PC, is granted, effective upon the filing of proof of service of the signed order upon plaintiff and all parties who have appeared in the case. Cal. R. Ct., rule 2.1362(e).

**13. S-CV-0035649 Pacific Gas and Electric Co. vs. DF Properties, et al**

The Motion to Consolidate and Specially Set Right to Take Trial was continued to July 14, 2015, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**14. S-CV-0035877 Zygarowicz, Sergio, et al vs. Price, Tim James, et al**

The parties requests' for judicial notice are denied as the matters of which the court is requested to take judicial notice are not relevant to a determination of the present motion. Further, plaintiffs' request does not comply with California Rules of Court, rule 3.1306(c).

Defendants' Motion to Set Aside Default is granted. The proofs of service filed March 16, 2015, purport to establish substituted service upon defendants Tim Price and Angela

Zygarewicz Price by service upon plaintiff Sergio Zygarewicz, co-resident of home in which all parties previously resided. Plaintiffs' acting process server is also their son. Plaintiffs fail to show reasonable attempts to serve defendants personally before resorting to substituted service. Code Civ. Proc. § 415.20(b). Further, the manner in which substituted service was purportedly accomplished in this case, by plaintiff's son leaving the documents with plaintiff himself, is highly questionable, and cannot be considered "reasonably calculated to give an interested party actual notice of the proceedings and an opportunity be heard ... [in order that] the traditional notions of fair play and substantial justice implicit in due process are satisfied." *Zirbes v. Stratton* (1986) 187 Cal.App.3d 1407, 1416 (cit. omit.)

Defendants' purported demurrer is overruled without prejudice. The demurrer must be filed separately and must comply with California Rules of Court, rule 3.1320.

Defendants shall file and serve their answer or other responsive pleading by no later than July 21, 2015.

**15. S-CV-0036001 Nevada Cemetery District vs. Auburn Cemetery District**

Ruling on Request for Judicial Notice

Respondent Auburn Cemetery District's request for judicial notice is granted as to Request Nos. 1-4. The request is otherwise denied. Judicial notice is sought as to the remaining exhibits pursuant to Evidence Code section 452(g) as "[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute" or Evidence Code section 452(h) as "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Even if the existence of a document is judicially noticeable, the truth of statements contained therein, and their proper interpretation, are not subject to judicial notice if those matters are reasonably disputable. *StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9. "[A] court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what the evidence appears to show." *Fremont Indemnity Co. v. Fremont Gen'l Corp.* (2007) 148 Cal.App.4th 97, 115. The court has no way of assessing the truth of statements made on the Lake of the Pines website, and such statements have not been shown to be appropriately the subject of judicial notice under any provision of Evidence Code section 452.

Ruling on Demurrer

Respondent's Demurrer to Petitioner's Verified Petition for Writ of Mandate is overruled.

A demurrer may be used to challenge defects that appear on the face of the pleading, or from matters outside the pleading that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The demurrer admits the truth of all material facts properly pleaded. *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967. No other extrinsic evidence can be considered. *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881. In this case,

respondent's demurrer is largely based on the Declaration of Sue Potter, District Manager for respondent. The factual assertions contained in the Declaration of Sue Potter constitute extrinsic evidence which the court may not consider in ruling on the demurrer and the court has not considered this declaration in ruling on this demurrer.

The petition adequately alleges sufficient facts to support the claims stated, for writ of mandamus and declaratory relief. Pursuant to Government Code section 6259(a), a claim is stated by allegations that public records are being improperly withheld from a member of the public. The applicability of Government Code section 6255 is a question of fact, which is not appropriately resolved in ruling on a demurrer. *See* Gov. Code § 6255 (“[t]he agency shall justify withholding any record by demonstrating ... *that on the facts of the particular case* the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record” (emph. add.))

Respondent shall file and serve its answer to the petition on or before July 21, 2015.

**16. S-CV-0036371 Gubler, Anthony vs. CSAA Insurance Exchange**

The Petition and Motion for Order to Compel Claimant to Submit to Neuropsychological Examination was dropped by the moving party.

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